

MISSOURI COURT OF APPEALS WESTERN DISTRICT

STATE OF MISSOURI,

Respondent,

v.

FRANK J. TROYA,

Appellant.

DOCKET NUMBER WD75301

Date: September 10, 2013

Appeal from:
Clay County Circuit Court
The Honorable Shane T. Alexander, Judge

Appellate Judges:
Division Three: Lisa White Hardwick, Presiding Judge, Mark D. Pfeiffer and Cynthia L. Martin, Judges

Attorneys:
Shaun J. Mackelprang, Jefferson City, MO, for appellant.
Damien S. De Loyola, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

STATE OF MISSOURI

v.

FRANK J. TROYA,

Respondent,

Appellant.

WD75301

Clay County

Before Division Three: Lisa White Hardwick, Presiding Judge, Mark D. Pfeiffer and Cynthia L. Martin, Judges

Frank Troya appeals from his conviction for driving while intoxicated and ten-year prison sentence. Troya contends the circuit court erred in denying his motion to suppress his incriminating statement to police on the basis that it was obtained in violation of *Miranda*. He also contends the court plainly erred in sentencing because the ten-year prison sentence was based on a misunderstanding of the range of punishment.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

Division Three Holds:

(1) Regardless of whether Troya's statement was obtained in violation of *Miranda*, the admission of his statement was not prejudicial in light of the otherwise overwhelming, properly-admitted evidence of his guilt. Thus, we affirm the circuit court's judgment with regard to the conviction for driving while intoxicated.

(2) Troya's range of punishment, as a persistent offender, should have been five to thirty years or life imprisonment. The circuit court's statements throughout the proceedings indicate that Troya's sentence was based on a mistaken belief that he was subject to a minimum term of ten years' imprisonment. Accordingly, Troya's sentence is reversed and we remand to the circuit court for resentencing.

Opinion by: Lisa White Hardwick, Judge

September 10, 2013

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